

**PATENT** 3523/2/US  
Ser. No. 09/933,366  
Page 5

## II. REMARKS

### A. In the Claims

Claim 1 has been amended herein to add the term "arising from infection by one or more gram-positive bacteria, anaerobic organisms, or acid-fast organisms". This term clarifies the term "infective disease," as used in the claim. Basis for this amendment can be found, for example, on page 6, lines 25-32 of the present specification. Applicant respectfully submits that this amendment does not add any new matter to the application.

### B. Withdrawal of Rejection of Claims 22-30, Under 35 U.S.C. § 112, First Paragraph

Applicant thanks the Examiner for withdrawing a previous rejection of Claims 22-30, under 35 U.S.C. § 112, first paragraph, in the Office Action mailed January 29, 2004, in response to Applicant's amendment and declaration filed November 3, 2003.

### C. Rejection of Claims 1-21, Under 35 U.S.C. §112, First Paragraph

Claims 1-21 were rejected under 35 U.S.C. §112, first paragraph, as "failing to comply with the written description requirement." (current Office Action, p. 3). The Office Action stated that there is insufficient description support for the term "infective disease", as the term could refer to "disease caused by agents ranging from bacteria to viruses to fungi to parasites." (*Id.*)

Applicant has amended the preamble of claim 1, herein, to refer to "an infective disease arising from infection by one or more gram-positive bacteria, anaerobic organisms, or acid-fast organisms". (Language of claim 1, after amendment to add the language underlined above) Such infections, and examples thereof, are specifically described on page 6, lines 25-32 of the present specification. Applicant respectfully submits that claim 1, after amendment herein, and claims 2-21, which depend from claim 1, all comply with the written description requirement.

In view of the above, Applicant respectfully requests withdrawal of the rejection of claims 1-21, under §112, first paragraph.

**PATENT** 3523/2/US

Ser. No. 09/933,366

Page 6

**D. Rejection of Claims 1-30, under 35 U.S.C. §103(a), over Barbachyn *et al.* (U.S. Patent No. 5,688,792) in view of Hilliard (Kalamazoo College Student Paper)**

Claims 1-30 were rejected in the present Office Action, under §103(a), over Barbachyn *et al.* in view of Hilliard, for reasons given in the preceding Office Action, mailed August 1, 2003. The same set of claims were rejected in the preceding Office Action over the same two references cited above and a third reference, WO 00/18387. Applicant thanks the Examiner for acknowledging that the rejection with respect to the third reference was overcome by a Declaration by Dr. Sandra Sims, Under 37 C.F.R. §1.131, filed by Applicant in response to the preceding Office Action. For reasons given below, Applicant respectfully submits that Hilliard is not available as prior art reference, under 35 U.S.C. §102(a), and Barbachyn *et al.*, alone, fails to teach or suggest the invention of claims 1-30.

As Applicant submitted in response to the preceding Office Action, Hilliard is a report that was written by a student at Kalamazoo College, describing research conducted at Pharmacia & Upjohn Company in the Fall of 1999. Applicant submits that the document and its contents were not published within one year prior to the priority date of the present application, and prior to the date of invention by Applicant of claims 1-30 of the present application. Applicant stated, in response to the previous Office Action, that the contents of the document were presented in an oral presentation at Kalamazoo College in February 2000.

Applicant respectfully submits that the present invention is not prior art under §102(a) because the present inventor conceived of the present claimed invention prior to the date of the oral presentation. As evidence of this fact, Applicant respectfully submits a second Declaration by Dr. Sandra Sims, Under 37 C.F.R. §1.131, proving that the invention was conceived of prior to January 1, 2000, well before the date of the oral presentation.

For reasons set forth above, Applicant respectfully submits that Hilliard is not prior art, under 35 U.S.C. §102(a), as alleged in the Office Action. Applicant also submits that the subject matter of claims 1-30 would not have been obvious to one of ordinary skill in the art over Barbachyn *et al.* alone, at the time the present invention was made. As was noted in the Office Action, Barbachyn *et al.* fails to teach the addition of any cyclodextrin to an oxazolidinone. Applicant submits, furthermore, that particular reference fails to suggest any such combination, as well.

**PATENT** 3523/2/US

Ser. No. 09/933,366

Page 7

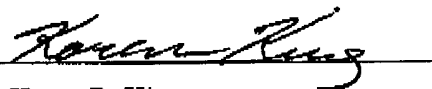
In view of the above, therefore, Applicant respectfully traverses the rejection of claims 1-30, under 35 USC §103(a), over Barbachyn *et al.* in view of and Hilliard.

### III. SUMMARY

For reasons given above, Applicant submits that all of the claims pending in the present case (i.e., claims 1-30) are in condition for allowance, after amendment as set forth herein above. Issuance of all the claims is, therefore, requested. The Examiner is invited to contact the undersigned at the telephone number given below, should she wish to discuss the present amendment and suggest changes to the claims in order to further prosecution of the application.

Dated: \_\_\_\_\_

5/27/04



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